

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

CLEVELAND COCA-COLA BOTTLING
COMPANY, INC.

and

Case 8-CA-34657

TEAMSTERS LOCAL NO. 293
a/w INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Mark F. Neubecker, Esq., of Cleveland, OH,
for the General Counsel.

Anna M. Parise, Esq., of Cleveland, OH,
for the Charging Party.

James A. Prozzi, Esq., of Pittsburgh, PA,
for the Respondent-Employer.

DECISION

Statement of the Case

Bruce D. Rosenstein, Administrative Law Judge. This case was tried before me on July 22, 2004, in Cleveland, Ohio, pursuant to a Complaint and Notice of Hearing (complaint) issued on January 30, 2004, by the Regional Director for Region 8 of the National Labor Relations Board (the Board). The original and an amended charge were filed by Teamsters Local Union No. 293 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Charging Party or Union) alleging that Cleveland Coca-Cola Bottling Company, Inc. (the Respondent or Employer), has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

Issues

The complaint alleges that Respondent violated Section 8(a)(1) and (5) of the Act by its refusal to furnish the Union with necessary and relevant information concerning the arbitration of two discharge grievances.

On the entire record, and after considering the briefs filed by the General Counsel, Charging Party and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

5 The Respondent is a Delaware corporation engaged in the bottling and distribution of
soft drink products from its facility in Bedford Heights, Ohio, where it purchases and receives
goods and services valued in excess of \$50,000 directly from points outside the State of Ohio.
The Respondent admits and I find that it is an employer engaged in commerce within the
10 meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within
the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Facts

15 By letter dated June 27, 2003,¹ the Union requested 14 items of information in order
to effectively investigate the February 3 discharge of employee Carl Laule and prepare for
arbitration (GC Exh. 4(h)).² The Union requested that the information be provided on or before
July 11.

20 By letter dated July 10, Attorney Prozzi responded to the Unions June 27 letter and
noted that arbitration was requested on the Laule grievance on February 17, a period more than
four months before the subject information request was made. Attorney Prozzi also asserted
that the Respondent considered the information request as pretrial discovery to assist the Union
25 in preparing for arbitration (GC Exh. 4(i)).

 By letter dated July 11, the Union by Counsel, recommended that the Respondent
provide a full and complete response to the Union's June 27 request for information (GC Exh.
4(j)).

30 By letter dated July 11, Attorney Prozzi responded to the Union's letter of the same date
and objected to the entire request for information because it appears to be a request for pretrial
discovery relating to the pending arbitration (GC Exh. 4(k)).

 By letter dated September 4, Union Counsel reiterated its request for the same
35 information dated June 27, and requested that it be provided on or before September 19 (GC
Exh. 4(l)).

 By letter dated October 6, the Union requested 13 items of information in order to
effectively investigate the July 14 discharge of employee Barry Paden and prepare for
40 arbitration (GC Exh. 4(s)). The Union requested that the information be provided on or before
November 7, as the arbitration hearing was scheduled for December 7.

 By letter dated November 5, Attorney Prozzi responded to the Union's October 6 letter
and noted that the Paden grievance was referred to arbitration on August 13, approximately two
45 months before the instant request for information was made (GC Exh. 4(t)). The letter also
notes that the Respondent is taking the same position it took in its response to the Laule
request for information.

¹ All dates are in 2003 unless otherwise indicated.

50 ² Respondent and the Union are parties to a 2002-2006 collective bargaining agreement
that contains a grievance and arbitration procedure (GC Exh. 3).

There is no dispute that the Respondent did not provide the requested information regarding employee Laule and Paden to the Union.

5 B. The Position of the Parties

The General Counsel and the Charging Party argue that the requested information is necessary and relevant for the effective administration of the grievance procedure and that the Respondent violated Section 8(a)(1) and (5) of the Act by refusing to furnish the requested information.

The Respondent opines that the Board in *California Nurses Assn.*, 326 NLRB 1362 (1998), held that Section 8(a)(5) of the Act is not to be used as a device to secure pretrial discovery in arbitration proceedings and claims that by its letters of June 27 and October 6, the Union is seeking to draw the Board into pretrial discovery, and therefore the complaint allegations must be dismissed.

All of the parties in the subject litigation rely on the Board's decision in *Ormet Aluminum Mill Products Corporation*, 335 NLRB 788 (2001), to support their respective positions. In this regard, the General Counsel and the Charging Party rely on the Board's decision to buttress their position that the refusal to provide information during the actual processing of a grievance ignores the benefit to the grievance procedure derived from a party's prompt fulfillment of its obligation to furnish the requested information. Therefore, the Respondent's refusal to provide the requested information precludes the Union from effectively being able to investigate and prepare for arbitration, and clearly violates Section 8(a)(1) and (5) of the Act.

The Respondent, principally relying on the dissent of then Chairman Hurtgen, argues that the information sought by the Union amounts to a classic request for pretrial discovery and Section 8(a)(5) is not to be used as a device to secure pretrial discovery in arbitration proceedings. Under these circumstances, Respondent's refusal to provide the requested information is not a violation of the Act. Indeed, the Respondent asserts that the Board's majority in *Ormet* found a violation based on the fact that the union's information request was made while the grievances were still being processed but before they were referred to arbitration. Here, both grievances had been referred to arbitration for a considerable period of time before the Union requested the information to investigate and prepare for the scheduled arbitration hearings.

C. Analysis

The Board has held that a union is entitled to requested information "if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties as the employees' exclusive bargaining representative." *Southern Nevada Builders Assn.*, 274 NLRB 350, 351, (1985). This liberal discovery-type standard nevertheless contains an important limitation: the data must be of use in fulfilling statutory duties. The "duty to furnish . . . information stems from the underlying statutory duty imposed on employers and unions to bargain in good faith with respect to mandatory subjects of bargaining." *Cowles Communications, Inc.*, 172 NLRB 1909 (1968). In *Daimler Chrysler Corp.*, 331 NLRB 1324 (2000), enf'd. 288 F.3d 434 (D.C. Cir. 2002), the Board held that the employer's duty to bargain includes the obligation to provide information that a union needs for the processing of grievances and the investigation of potential grievances. Likewise, the existence of an arbitration proceeding does not relieve a party from its duty to furnish relevant information requested by the other party. *San Francisco Newspaper Agency*, 309 NLRB 901 (1992);

Jewish Federation Council of Greater Los Angeles, 306 NLRB 507 (1992).

My independent review of the Union's June 27 and October 6 letters lead me to conclude that the information requested was necessary and relevant for the investigation and preparation for the arbitration of the two discharge grievances. In this regard, documentation such as the grievants personnel file, complaints made by customers or employees about the grievants and discipline visited upon other employees for similar infractions is information that is significantly relevant to the discharge of the grievants and any penalty that might be imposed by an arbitrator. See *Wayne Memorial Hospital*, 322 NLRB 100, (1996); *U.S. Postal Service*, 301 NLRB 709 (1991). Moreover, Charging Party Attorney Parise credibly testified as to each item listed in the Union's June 27 and October 6 letters and why the information was necessary and relevant to the continued investigation and preparation of the grievances for arbitration. Thus, I conclude that the General Counsel and the Charging Party have established the necessary threshold to establish a Section 8(a)(1) and (5) violation of the Act. *Pennsylvania Power and Light Company*, 301 NLRB 1104-05 (1991).

The arguments advanced by the Respondent in the subject case are misplaced. Indeed, the dissent of Chairman Hurtgen in the *Ormet* case was heavily premised on the fact that the majority of the information requested did not seek documents but rather reasons for the employer's actions. In the subject case, the Union's requests for information specifically sought documents or names of customers or employees making complaints about the grievants rather than reasons for the Respondent's actions. Although the Union requested the information after the grievances were referred to arbitration this does not in any manner undermine the fact that the requested information is necessary and relevant. It would be incongruous to hold that if the information is necessary and relevant and is not provided while the grievances are still being processed gives rise to a violation of the Act (*Ormet* case) that once the same grievances are referred to arbitration that the refusal to provide the identical information is not a violation. An analogy is helpful to explain the inconsistencies in the Respondent's position. It has been my experience that numerous parties to Board unfair labor practice proceedings do not request information, using subpoena duces tecums under Section 102.31 of the Board's Rules and Regulations, until 7-10 days before a scheduled unfair labor practice hearing. If a petition to revoke is filed by the person served with a subpoena who does not intend to comply, the Regional Director if the petition is made prior to the hearing refers the petition to the administrative law judge for ruling. The administrative law judge shall revoke the subpoena if in his or her opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The information requested by a subpoena duces tecum is routinely sought by the requesting party to use in its preparation of the case during the unfair labor practice hearing. The Board has not previously held that a refusal to produce subpoenaed information is privileged because the information sought is pretrial discovery. Rather, the Board and the administrative law judge must determine whether the requested information sought in the subpoena is necessary and relevant to the party that made the underlying request.

Based on the forgoing discussion, I find that the Respondent's refusal to provide the requested information and its particular reliance on the dissent of Chairman Hurtgen in the *Ormet* case is misplaced. Rather, I conclude that the Union's request for information is necessary and relevant to the investigation and preparation of the two discharge grievances for arbitration and the Respondent's refusal to provide it violated Section 8(a)(1) and (5) of the Act.

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. At all relevant times, the Union has been the exclusive collective-bargaining representative of the following employees of Respondent in an appropriate bargaining unit within the meaning of Section 9(b) of the Act.

All drivers, salesmen and helpers, excluding supervisory employees as defined in the National Labor Relations Act and all other employees represented by other unions or unrepresented.

4. By failing and refusing to furnish the Union with the information requested in its June 27 and October 6, 2003, information requests, the Respondent has failed to fulfill its statutory obligations and has thereby engaged in, and is, engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, The Cleveland Coca-Cola Bottling Company, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Teamsters Local Union No. 293 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America by refusing to furnish them with the information requested in its June 27 and October 6, 2003 information requests regarding two discharge grievances.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish Teamsters Local Union No. 293 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with the

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

information it requested in its June 27 and October 6, 2003 information requests regarding two discharge grievances.

- 5 (b) Within 14 days after service by the Region, post at its facility in Bedford Heights, Ohio copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 27, 2003.
- 10 (c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.
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20 IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. October 1, 2004

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Bruce D. Rosenstein
Administrative Law Judge

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⁴ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

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APPENDIX

NOTICE TO EMPLOYEES

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Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

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FEDERAL LAW GIVES YOU THE RIGHT TO

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Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT in any like or related manner interfere with restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

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WE WILL NOT refuse to provide the Union with requested information relevant to the Union's performance of its collective-bargaining duties as your exclusive bargaining representative.

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Cleveland Coca-Cola Bottling Company, Inc.

(Employer)

Dated _____ By _____
(Representative) (Title)

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The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

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1240 East 9th Street, Federal Building, Room 1695, Cleveland, OH 44199-2086

(216) 522-3716, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

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THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (216) 522-3723.

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